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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

No. 3:20-CV-05640-YGR

**DECLARATION OF M. BRENT
BYARS IN SUPPORT OF PLAINTIFF
EPIC GAMES, INC.'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: September 28, 2020, 9:30 a.m. (via
Zoom Platform)

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez-Rogers

1 I, M. Brent Byars, declare as follows:

2 1. I am an attorney at the law firm of Cravath, Swaine & Moore LLP, and am one of
3 the attorneys representing Epic Games, Inc. in this action. I am admitted to appear before this
4 Court *pro hac vice*.

5 2. I submit this declaration in support of Plaintiff Epic Games, Inc.'s Motion for a
6 Preliminary Injunction. The contents of this declaration are based on my personal knowledge and
7 on information and documents provided to me by Epic Games, Inc. If called as a witness, I could
8 and would competently testify thereto.

9 3. Apple maintains a Developer Program website through which application
10 developers may access information concerning their developer accounts. Attached as **Exhibits A**
11 through **G** are true and correct screenshots taken at my direction of the Membership Information
12 that is displayed when logged into the seven separate Developer Program accounts of Epic
13 Games, Inc. and its affiliates, reflecting for each account: (1) the "Team Name", (2) the "Team
14 ID" or account number (redacting all but the last two characters), and (3) the address associated
15 with the account. In addition, Epic Games, Inc. and Life on Air, Inc. have separate developer
16 accounts through Apple's Developer Enterprise Program. Attached as **Exhibits H** and **I** are true
17 and correct screenshot taken at my direction of the Membership Information displayed when
18 logged into the Developer Enterprise Program accounts belonging to Epic Games, Inc. and Life
19 on Air, Inc., respectively.

20 4. For each developer account, Apple requires that the developer owning such
21 account agree to (1) an Apple Developer Agreement, and (2) an Apple Developer Program
22 License Agreement (or in the case of the Developer Enterprise Program, a Developer Enterprise
23 Program License Agreement). True and correct copies of these standard Agreements are attached
24 as **Exhibits J** through **L**. Attached as **Exhibit M** is a true and correct copy of Schedule 2 to the
25 Apple Developer Program License Agreement.

26 5. Attached as **Summary Exhibit N** is a summary of the Membership Information
27 pertaining to each separate developer account of Epic Games, Inc. and its affiliates, together with
28 an identification of the iOS mobile applications (if any) that have been published by each account

and that are listed as available in Apple's App Store (or, in the case of *Fortnite*, *Battle Breakers*, *Infinity Blade Stickers*, and *Spyjinx*, were available before Apple removed them). **Summary Exhibit N** also identifies the dates on which each separate Developer Agreement and Developer Program License Agreement (or Developer Enterprise Program License Agreement) was "accepted" by each entity according to the information on Apple's Developer Program website. **Summary Exhibit N** was prepared at and under my direction, and was reviewed by me for accuracy.

6. To access Apple application development tools, including Apple Software Development Kits ("SDKs") and other tools, Apple requires that individual and organizational application developers (including Epic Games, Inc. and its affiliates) accept the Xcode and Apple SDKs Agreement. A true and correct copy of the Xcode and Apple SDKs Agreement drawn from Apple, Inc.'s website is attached as **Exhibit O**. **Summary Exhibit N** also lists the Xcode and Apple SDKs Agreement entered into by Epic Games, Inc. and its affiliates.

7. Attached hereto as **Exhibit P** is a true and correct copy of Apple's App Store Review Guidelines (last accessed Sept. 4, 2020), <https://developer.apple.com/app-store/review/guidelines/>.

8. Attached hereto as **Exhibit Q** is a collection of true and correct copies of public online posts and comments excerpted from a larger thread and redacted for profanity. The table below lists the links to the unredacted originals and the respective page numbers for each thread in the Exhibit.

| Source | URL (all last accessed Sept. 4, 2020) | Exhibit Page(s) |
|----------|---|--------------------|
| Facebook | https://www.facebook.com/FortniteGame/posts/3595938967150068 | 1 |
| Twitter | https://twitter.com/FortniteGame/status/1294006412931223552 | 2 |
| Twitter | https://twitter.com/iFireMonkey/status/1294003723614789635 | 3-4 |
| Twitter | https://twitter.com/iFireMonkey/status/1293986371691061249 | 4-6 |
| Twitter | https://twitter.com/CyBrHyp3ri0n/status/1294016582134517769 | 7 |
| Twitter | https://twitter.com/glendapichardo1/status/1294067178757591040 | 7 |
| Twitter | https://twitter.com/Savanna11194257/status/1294067792728260609 | 8 |
| Twitter | https://twitter.com/artguymatt/status/1293999370225029123 | 8 |
| Twitter | https://twitter.com/Cynpos/status/1294067083161075712 | 8 |
| Twitter | https://twitter.com/DoumbouyaBaby/status/1294054348440379396 | 9 |

| | | |
|---------|---|-------|
| Twitter | https://twitter.com/Amro_Hesham/status/1294034792309194755 | 9 |
| Twitter | https://twitter.com/Eni5G/status/1294026448047669256 | 9 |
| Twitter | https://twitter.com/TomatoTurbulent/status/1294004013357248512 | 10 |
| Twitter | https://twitter.com/SDavodson/status/1294098232033845248 | 10 |
| Twitter | https://twitter.com/FNBRHQ/status/1293985350726168583 | 11-12 |
| Twitter | https://twitter.com/markgurman/status/1293984069722636288 | 13 |
| Twitter | https://twitter.com/FNBRHQ/status/1294004377829675008 | 14-15 |
| Twitter | https://twitter.com/izukikii/status/1299289035819683840 | 16 |
| Twitter | https://twitter.com/vssvsn/status/1298835414434881536 | 17 |
| Twitter | https://twitter.com/KazHommy/status/1298929242231762945 | 18 |
| Twitter | https://twitter.com/ObserverTokyo/status/1298806941611773952 | 19 |
| Twitter | https://twitter.com/Jay2Death/status/129885526133575681 | 20 |
| Twitter | https://twitter.com/matthew75890089/status/1299174328462766081 | 21 |
| Twitter | https://twitter.com/matthew03596993/status/1299042539287216129 | 22 |
| Twitter | https://twitter.com/CK46735585/status/1300535509807173632 | 23 |
| Twitter | https://twitter.com/CHicken93795289/status/1299175505992781825 | 24 |
| Twitter | https://twitter.com/makugan99/status/1301399418441281536 | 25 |

9. Attached hereto as **Exhibit R** is a collection of true and correct copies of public online posts and comments regarding *Unreal Engine*. The table below lists the links to the original posts and comments, and the respective page numbers for each thread in the Exhibit.

| Source | URL (all last accessed Sept. 4, 2020) | Exhibit Page(s) |
|---------|---|--------------------|
| Twitter | https://twitter.com/joshfromireland/status/1295445570044264448 | 1 |
| Twitter | https://twitter.com/ShiinaBR/status/1295439235135213568 | 2 |
| Twitter | https://twitter.com/tomwarren/status/1295435205440921601 | 3 |
| Twitter | https://twitter.com/imranzomg/status/1295438968146685952 | 4 |
| Twitter | https://twitter.com/stroughtonsmith/status/1295512490944626689 | 5 |
| Twitter | https://twitter.com/thisistechtoday/status/1295460091446009856 | 6 |
| Twitter | https://twitter.com/azurthedragon/status/1295728717227065345 | 7 |
| Twitter | https://twitter.com/NeonIain/status/1295597899707908099 | 8 |
| Twitter | https://twitter.com/MrStrawberrie/status/1295440597054971906 | 9 |
| Twitter | https://twitter.com/Hrief988/status/1295439947395215360 | 10 |
| Twitter | https://twitter.com/GamingReinvent/status/1295459203889467399 | 11 |
| Twitter | https://twitter.com/V03Angelos/status/1295455743462838273 | 12 |
| Twitter | https://twitter.com/SiliconHanna/status/1300478878557716480 | 13 |

10. Attached hereto as **Exhibit S** is a true and correct copy of the Declaration of Kevin Gammill in Further Support of Plaintiff Epic Games, Inc.'s Motion for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue, dated August, 22, 2020 (ECF No. 40). Microsoft has consented to Epic re-filing this prior declaration in support of Epic's Motion for a Preliminary Injunction.

11. Attached hereto as **Exhibit T** is a collection of true and correct screenshots of the webpages for PayPal, Stripe, Square, Braintree, and Amazon regarding their standard payment processing fees. The table below lists the links to the original webpage and the respective page numbers for each in the Exhibit.

| Company | URL (all last accessed Sept. 4, 2020) | Exhibit Page(s) |
|----------------|---|------------------------|
| PayPal | https://www.paypal.com/us/webapps/mpp/merchant-fees#fixed-fees-standard | 1 |
| Stripe | https://stripe.com/pricing#pricing-details | 2 |
| Square | https://squareup.com/us/en/payments/our-fees | 3 |
| Braintree | https://www.braintreepayments.com/braintree-pricing | 4 |
| Amazon | https://pay.amazon.com/help/201212280 | 5 |

12. Attached hereto as **Exhibit U** is a collection of true and correct screenshots of the webpages for DoorDash, Grubhub, Lyft, Postmates, Ticketmaster, and Uber concerning their alternative payment options for in-app purchases. The table below lists the links to the original webpage and the respective page numbers for each in the Exhibit.

| Company | URL (all last accessed Sept. 4, 2020) | Exhibit Page(s) |
|----------------|---|------------------------|
| Doordash | https://help.doordash.com/consumers/s/article/How-do-I-update-mycreditcard-information?language=en_US | 1-2 |
| Grubhub | https://www.grubhub.com/help/contact-us/i-want-to-add-or-update-my-paymentmethod/H4ljoTSe8RbtDsWgcZaVy | 3 |
| Lyft | https://help.lyft.com/hc/en-ca/articles/115013080408-How-to-add-or-update-paymentinfo | 4 |
| Postmates | https://support.postmates.com/buyer/articles/220089367-article-How-do-I-update-my-payment-method--#h_a58efa5a-6cf3-4b7c-bb1e-19f7aaff63bd | 5 |
| Ticketmaster | https://help.ticketmaster.com/s/article/Accepted-payment-methods?language=en_US | 6 |
| Uber | https://help.uber.com/riders/article/updating-a-payment-method-on-youraccount?nodeId=8f78dca4-9d75-44f1-bdc1-e90ca3da0319 | 7 |

13. Attached hereto as **Exhibit V** is a true and correct copy of the Statement of Tim Cook, Apple Inc., U.S. House of Representatives, Judiciary Committee Subcommittee on Antitrust, Commercial and Administrative Law, July 29, 2020 (last accessed Sept. 4, 2020), <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-Wstate-CookT-20200729.pdf>.

14. Attached hereto as **Exhibit W** is a true and correct excerpted copy of Apple Inc.'s Form 10-K for the fiscal year ended September 28, 2019, filed October 31, 2019, <https://www.sec.gov/ix?doc=/Archives/edgar/data/320193/000032019319000119/a10-k20199282019.htm>

15. Attached hereto as **Exhibit X** is a true and correct copy of the Apple One (1) Year Limited Warranty for Apple Branded Products (last accessed Sept. 4, 2020), <https://www.apple.com/legal/warranty/products/ios-warranty-document-us.html>.

16. Attached hereto as **Exhibit Y** is a true and correct copy of Apple Inc.'s iOS and iPadOS Software License Agreement for iOS 13 and iPadOS 13 (last accessed Sept. 4, 2020), https://www.apple.com/legal/sla/docs/iOS13_iPadOS13.pdf.

17. Attached hereto as **Exhibit Z** is a true and correct copy of the Apple Media Services Terms and Conditions (last accessed Sept. 4, 2020), <https://www.apple.com/legal/internet-services/itunes/us/terms.html>.

18. Attached hereto as **Exhibit AA** is a true and correct copy of the webpage Google, *Contact an Android app's developer* (last accessed Sept. 4, 2020), <https://support.google.com/googleplay/answer/113418?co=GENIE.Platform%3DAndroid&hl=en>.

19. Attached hereto as **Exhibit BB** is a true and correct copy of the article by Sam Byford, *Apple blocks Facebook update that called out 30-percent App Store 'tax'*, Verge (Aug. 28, 2020), <https://www.theverge.com/2020/8/28/21405140/apple-rejects-facebook-update-30-percent-cut>.

20. Attached hereto as **Exhibit CC** is a true and correct copy of the article by Nilay Patel, *Apple's App Store Fees Are "Highway Robbery", Says House Antitrust Committee Chair*, Verge (June 18, 2020), <https://www.theverge.com/2020/6/18/21295778/apple-app-store-hey-email-fees-policiesantitrust-wwdc-2020>.

21. Attached hereto as **Exhibit DD** is a true and correct copy of the white paper *Fortnite: The New Social Media?*, National Research Group (June 4, 2019), <https://www.nationalresearchgroup.com/news/fortnite-the-new-social-media>.

22. Attached hereto as **Exhibit EE** is a true and correct copy of the article *Apple*

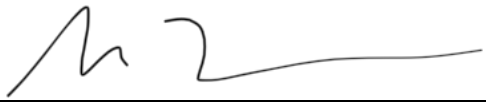
1 *Continues to Lead Global Handset Profit Share*, Counterpoint Research (Dec. 19, 2019),
2 [https://www.counterpointresearch.com/apple-continues-lead-global-handset-industry-profit-](https://www.counterpointresearch.com/apple-continues-lead-global-handset-industry-profit-share/)
3 [share/](https://www.counterpointresearch.com/apple-continues-lead-global-handset-industry-profit-share/).

4 23. Attached hereto as **Exhibit FF** is a true and correct copy of the article by Chuck
5 Jones, *Apple Continues to Dominate The Smartphone Profit Pool*, Forbes (March 2, 2019),
6 [https://www.forbes.com/sites/chuckjones/2018/03/02/apple-continues-to-dominate-the-](https://www.forbes.com/sites/chuckjones/2018/03/02/apple-continues-to-dominate-the-smartphone-profit-pool/#7flab2061bb7)
7 [smartphone-profit-pool/#7flab2061bb7](https://www.forbes.com/sites/chuckjones/2018/03/02/apple-continues-to-dominate-the-smartphone-profit-pool/#7flab2061bb7).

8 24. Attached hereto as **Exhibit GG** is a true and correct copy of the article by Takashi
9 Mochizuki, *Sony Is Struggling With PlayStation 5 Price Due to Costly Parts*, Bloomberg (Feb.
10 13, 2020), [https://www.bloomberg.com/news/articles/2020-02-14/sony-is-struggling-with-](https://www.bloomberg.com/news/articles/2020-02-14/sony-is-struggling-with-playstation-5-price-due-to-costly-parts)
11 [playstation-5-price-due-to-costly-parts](https://www.bloomberg.com/news/articles/2020-02-14/sony-is-struggling-with-playstation-5-price-due-to-costly-parts).

12 25. Attached hereto as **Exhibit HH** is a true and correct copy of the article by Gene
13 Park, *Silicon Valley is racing to build the next version of the Internet. Fortnite might get there*
14 *first.*, Washington Post (April 17, 2020), [https://www.washingtonpost.com/video-](https://www.washingtonpost.com/video-games/2020/04/17/fortnite-metaverse-new-internet/)
15 [games/2020/04/17/fortnite-metaverse-new-internet/](https://www.washingtonpost.com/video-games/2020/04/17/fortnite-metaverse-new-internet/).

16 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
17 and correct and that I executed this declaration on September 4, 2020 in Brookhaven, New York.

18 
19 _____
20 M. Brent Byars